

CITY COUNCIL OF THE CITY OF ANNAPOLIS

ORDINANCE NO. O-9-05

Introduced by Mayor Moyer
Alderman Hammond
Alderman Fox
Alderman Cohen

LEGISLATIVE HISTORY

First Reader:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
2/14/05	3/23/05	2/28/05	6/14/05
Referred to:	Meeting Date:	Action Taken:	
Economic Matters	5/4/05	Favorable	

AN ORDINANCE concerning

Lease of City Property - Boat Shows

FOR the purpose of authorizing a lease of certain municipal property located in the general harbor, Dock Street and Edgewood Road areas to United States Yacht Shows, Inc. and Annapolis Boat Shows, Inc., bodies corporate, for a certain period of time in October 2009, subject to certain terms, provisions and conditions, for the purpose of conducting boat shows; and all matters relating to said lease.

* * * * *

WHEREAS, United States Yacht Shows, Inc. and Annapolis Boat Shows, Inc. desire to lease certain municipal property for the purpose of conducting boat shows; and

WHEREAS, the Annapolis City Council believes that these proposed boat shows would inure to the benefit of the City; and

WHEREAS, a lease setting forth details of the rental has been prepared and is considered satisfactory; and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the lease.

NOW THEREFORE:

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the proposed lease between the City of Annapolis and United States Yacht Shows, Inc. and Annapolis Boat Shows, Inc. for the rental of certain municipal property in the general harbor, Dock Street and Edgewood Road areas, as described in the lease, a copy of which is attached hereto and made a part hereof, for the period from October 5 through 20, 2009, subject to the option to expand or reduce the number of days of the tenancy as provided in the lease, is hereby approved and the Mayor is hereby authorized to execute the lease on behalf of the City of Annapolis.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that it is expressly found by the City Council that the property to be leased will better serve the public need for which the property was acquired by stimulating local interest in the boating industry, encouraging visitors and residents of the City to visit the harbor and dock area, by generating tax revenues and rental income to the City and otherwise providing economic benefits to the City.

SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

ADOPTED this 9th day of May, 2005.

ATTEST:

THE ANNAPOLIS CITY COUNCIL

Deborah Heinbuch, MMC
City Clerk

BY: _____
ELLEN O. MOYER, MAYOR

LEASE AGREEMENT

Authorized by O-9-05

THIS AGREEMENT, made this ____ day of _____, 2005, by and between **THE CITY OF ANNAPOLIS**, a municipal corporation (hereinafter called "Lessor") on the one hand and the **UNITED STATES YACHT SHOWS, INC.** and **ANNAPOLIS BOAT SHOWS, INC.** (hereinafter jointly and severally called "Lessee") on the other hand.

Article I

Section 1.1. Premises and Term: Lessor hereby leases to Lessee, for the purpose of holding two boat shows, that property and water hereinafter called the "premises" described and shown on Exhibit A, which is attached hereto and made a part hereof, for the periods of time hereinafter designated, subject to the provisions and terms of this agreement:

2009 - October 5 through October 20, inclusive.

In addition, if available for such use, Lessee shall have the right to occupy that portion of Lessor's former sewage treatment property located on Edgewood Road as shown on Exhibit B hereto (hereinafter "Edgewood Road property") from August 1, to October 31 of 2009 for the purpose of staging and breakdown of the shows. Occupancy shall be subject to this Agreement. If so used, the word "premises" used in this Agreement shall include the Edgewood Road property.

Section 1.2. Revisions to Premises: Lessor shall have the right to change the area of the premises from time to time in order to reflect any change in ownership or infrastructure. If the total area of the premises (exclusive of the Edgewood Road property) is reduced pursuant to this paragraph by five percent (5%) or more of the total area, Lessee shall be entitled to pro rata reduction in the Base Rent. If the total area of the premises is reduced pursuant to this paragraph by ten percent (10%) or more of the total area, Lessee shall have the right to pro rata reduction or to terminate the Lease. If Base Rent is determined using Ticket Sales Base Rent, then the reduction hereunder shall be calculated by reducing the fifty percent (50%) multiplier under Section 1.3(a) to reflect the area reduction (eq.: if the premises is reduced ten percent (10%) then Base Rent will equal: [50% x 90%] x gross ticket receipts. If the Base Rent is determined

1 using Minimum Base Rent, then the reduction hereunder shall be calculated by
2 reducing the Base Rent by the percentage of the reduction of the total area. For
3 purposes of this Section, the Edgewood Road property shall not be included in
4 premises area calculations or in rent adjustment calculations.

5 **Section 1.3. Rent:** Except as provided in Section 2.3, Base Rent shall
6 be: (A) the greater of (i) 50% of Lessee's gross receipts (after deducting
7 admission taxes) from the sale by Lessee of tickets for admission to the shows
8 for that year (hereinafter "Ticket Sales Base Rent") or, (ii) Three Hundred
9 Seventy Five Thousand Nine Hundred Fifty Dollars (\$375,950.00) (hereinafter
10 "Minimum Base Rent"); plus (B) if the Edgewood Road property is used, Two
11 Thousand Sixty Dollars (\$2,060.00) each year used (hereinafter "Edgewood
12 Road Rent"). Lessee shall pay Lessor the Minimum Base Rent, in full, within
13 thirty (30) days of the close of the show. Any further monies over the Minimum
14 Base Rent due to Lessor as a result of ticket sales shall be paid by Lessee to
15 Lessor simultaneously with the payment of the State admissions tax. Proof of
16 gross receipts from ticket sales shall be supplied at that time to the City of
17 Annapolis Director of Finance in a form satisfactory to the said Director. In
18 addition to the Base Rent, Lessee shall pay Lessor, Additional Rent equal to
19 Twenty Five Thousand Seven Hundred Fifty Dollars (\$25,750.00) toward the
20 costs incurred by the City in providing electricity, water, inspections and public
21 safety services to the Boat Shows and in providing increased public services
22 during the Shows. Lessee shall pay Lessor the Additional Rent and (if
23 applicable) Edgewood Road rent, in full, at the time Lessee pays the Minimum
24 Base Rent.

25 **Article II**

26 **Section 2.1. Number of Days:** Lessor grants to Lessee the right to add
27 one day at the end of either or both of the two boat shows for general public
28 admission. Lessee shall have the right, in its sole discretion, to reduce the
29 number of days of either or both of the boat shows.

30 **Section 2.2. Other Boat Shows:** Lessor covenants that it will not lease
31 the premises for the purpose of holding boat shows on the premises from June 1
32 through November 30 of 2009. Lessee may, within its sole discretion, provide
33 written authority to waive these restrictions. These restrictions shall be deemed
34 to be waived by Lessee automatically as to either boat show (power or sail)
35 reduced to less than one 10-hour day under Section 2.1.

36 **Section 2.3. Adjustment to Rent:** The Minimum Base Rent and
37 Additional Rent shall be increased or reduced proportionately, if Lessee
38 exercises its rights to extend or shorten the number of days pursuant to Section
39 2.1. Notice of any such extension or shortening shall be given by Lessee in
40 writing to Lessor by June 1 of the year in which the affected show is to be held.
41 All of the other provisions of the lease shall remain in full force and effect.

1 **Article III**

2 **Section 3.1. Facilities and Services:** Lessee shall have the use of the
3 following facilities and services without additional charge:

4 All that area indicated on Exhibit A (except as the area may be revised
5 pursuant to Paragraph 1.2 hereof), which is attached hereto and
6 made a part hereof, including Lessor's right and interest in the so-
7 called "Fawcett's Lot", and all related facilities including ingress and
8 egress, existing and normal street and harbor lighting, existing and
9 normal electricity, water supply for said area, and normal police and
10 fire protection.

11 **Section 3.2. Police Services:** Lessor agrees to provide police services
12 related to traffic control outside the show, security for Boat Show office within the
13 show and liaison with Lessee's security guards inside the show without further
14 charge.

15 **Section 3.3. Fire Services:** Lessor agrees to provide fire protection as
16 required without further charge. Following the erection of all booths and other
17 show structures as described under Section 7.1 hereof but before the show
18 opens, the parties shall meet at the premises to assure compliance with Fire
19 Department regulations and accessibility of fire lanes and turning radius. No
20 open flame devices or running of watercraft propulsion engines shall be
21 permitted on the demised premises during the open hours of the shows.

22 **Section 3.4. Utilities:** Lessor shall provide water and electricity without
23 further charge. Lessee at its own expense shall install all temporary electrical
24 equipment, lines and devices required to provide power to the premises in
25 compliance with National Electric Code. Lessee shall be responsible for refuse
26 removal as provided under Section 8.1 hereof.

27 **Section 3.5. Parking and Transportation:** The Lessee shall coordinate
28 all plans for the provision of any intra-city mode of transportation during the
29 course of the boat shows with the City of Annapolis Department of
30 Transportation. Lessee shall furnish to Lessor a transportation plan including a
31 parking element.

32 **Section 3.6. Facilities:** The Lessee shall provide adequate toilet facilities
33 for men and women, including the disabled, distributed throughout the premises.
34 The Lessee shall provide on the premises access for the disabled as required by
35 the Americans with Disabilities Act of 1990 (ADA).

36 **Section 3.7. Pre-Show Meetings and Inspection:** Prior to the opening of
37 each show, representatives of the Annapolis Police Department, Annapolis Fire
38 Department and Annapolis Department of Public Works shall inspect the
39 premises and nearby areas with Lessee's representative to determine
40 compliance with City requirements. Written approval by representatives of all
41 three departments is required before Lessee may open the show. The opening

1 of the show shall not be delayed by any department whose representative is not
2 present for said inspection. Lessor shall not refuse permission to open the show
3 or any part of the show under this paragraph unless a threat to health or safety
4 has been identified. Lessor shall make every effort to limit that part of the show
5 not opened in the event of such threat and to allow Lessee to open the closed
6 portion of the show as soon as the threat is abated to Lessor's satisfaction. All
7 other federal, state or county permits which may be required shall be the
8 responsibility of the Lessee.

9
10 **Article IV**

11 **Section 4.1. Insurance:** Lessee shall, at its own expense, obtain and
12 keep in full force and effect comprehensive commercial general liability insurance
13 of no less than Two Million Dollars (\$2,000,000.00) combined single limit, bodily
14 injury and property damage; and Eight Million Dollars (\$8,000,000.00) umbrella
15 policy; which shall be effective during the entire period of time during which the
16 Lessee shall use or occupy the premises, or any part thereof.

17 Such insurance policy shall specifically name the City of Annapolis, and in
18 their capacity as such, the officers, agents and employees thereof, as additionally
19 insured, and insure against any and all loss, costs, damages, and expenses
20 suffered by any person, or to any property, including property owned by Lessor,
21 due to or alleged to be due to: an act, omission or the negligence of Lessee, its
22 officers, agents, employees, vendors, subtenants or contractors; or directly or
23 indirectly to the use of the premises, or any part thereof by Lessee, its officers,
24 agents, employees, vendors, subtenants or contractors.

25 The insurer or insurers of the policy or policies referred to in the preceding
26 paragraph shall be: authorized to write the required insurance; approved by the
27 Insurance Commissioner of the State of Maryland; and subject to the reasonable
28 approval of the City Attorney of Annapolis. The form and substance of the policy
29 or policies of insurance shall also be subject to reasonable approval by the City
30 Attorney of the City of Annapolis, and shall be submitted to the City Attorney for
31 such approval not less than thirty (30) days prior to Lessee's occupancy of the
32 premises. Said policy or policies of insurance shall then be secured by Lessee
33 and filed with the City Attorney of the City of Annapolis not less than fifteen (15)
34 days prior to Lessee's occupancy of the premises. Said approvals shall not be
35 unreasonably withheld.

36 The Certificate for each such insurance policy shall contain a statement on
37 its face that the insurer will not cancel the policy or fail to renew the policy,
38 whether for nonpayment of premium, or otherwise, and whether at the request of
39 Lessee or for any other reason, except after thirty (30) calendar days advance
40 written notice mailed by the insurer to the City Attorney of the City of Annapolis
41 and that such notice shall be transmitted postage prepaid, with return receipt

requested.

The obligations of Lessee under this Article are part of but do not limit or satisfy Lessee's obligations under Article V.

Article V

Section 5.1. Indemnity: Lessee agrees that it shall forever indemnify, defend and hold harmless the Lessor, its officers, agents, employees, from and against any and all claims, suits, actions, judgments, and liability for loss, injury, damages and/or expenses suffered or alleged to have been suffered by any person or to any property due to or alleged to be due to: an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors; or directly or indirectly the use of the leased premises, or any part thereof, by Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Lessee agrees to reimburse Lessor, within thirty (30) days after demand for such reimbursement, for any damage done to Lessor's buildings, facilities, equipment or property caused by an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors during Lessee's use and occupancy of the leased premises or any part thereof.

Article VI

Section 6.1. Security: Lessee shall contract with and pay, as independent contractors, security guards from an agency duly licensed by the State of Maryland, in numbers sufficient to maintain security, peace and order at the boat shows inside the premises during the lease term.

Article VII

Section 7.1. Interior Construction: Lessee shall have the right to construct, install or erect seats, platforms, booths, tanks, scaffolding, rigging, floating piers, pilings, docks, catwalks, tents, exhibits, and any other apparatus or structure which Lessee may deem necessary or desirable for the purpose of presenting the boat shows. In addition, the Lessee shall have the right to erect and construct a temporary fence so as to enclose the premises in such a manner as to limit entry onto the premises through controlled entrances. Such fence shall not contain barbed wire, razor wire or any similar materials.

Section 7.2. Exterior Construction: Lessee agrees to erect and construct temporary wooden sidewalks, wherever necessary to provide for pedestrian traffic, outside of the leased premises where the existing sidewalks are enclosed in the premises by said temporary fence described in Section 7.1. Said walks shall be handicap accessible and illuminated during the hours of darkness and maintained by Lessee in a safe and secure condition.

Section 7.3. ADA and Other Permits: Lessee hereby assumes exclusive responsibility for compliance with any and all applicable provisions of the Americans with Disabilities Act of 1990, as amended from time to time at the

1 demised premises, during the entire time Lessee uses or occupies those
2 premises, or any part thereof, pursuant to this Lease Agreement. Subject to the
3 inspection provisions of Section 3.7 and to standard public safety and health
4 approvals, any and all permit, license or authorization required to be obtained
5 from the City or any agency thereof by the Lessee during the term of this Lease
6 for the purpose of constructing or erecting the temporary structures described in
7 Sections 7.1 and 7.2 above or for operating the shows, shall be deemed granted
8 and issued upon the execution of this Lease by the Lessor and Lessee. All other
9 federal, state or county permits, which may be required shall be the responsibility
10 of the Lessee.

11 **Article VIII**

12 **Section 8.1. Trash:** Lessee, at its own expense, shall provide an
13 adequate number of trash containers for its use within the show grounds during
14 the entire occupancy period of the premises and shall provide for the prompt
15 removal of said containers, trash and refuse. Lessor, at its own expense, shall
16 provide an adequate number of trash dumpsters outside the show grounds for
17 the use of Lessee during the occupancy period and shall provide for the prompt
18 removal of trash and refuse in these dumpsters.

19 **Section 8.2. Cleanliness:** Lessee shall be responsible for keeping the
20 premises free of debris, trash and refuse and shall place the same in dumpsters
21 or receptacles.

22 **Section 8.3. Sanitation and Toilets:** Lessee shall, at its own expense,
23 provide adequate and sanitary toilet facilities throughout the demised premises
24 for use by the general public and others attending or participating in the boat
25 shows.

26 **Article IX**

27 **Section 9.1. Quiet Enjoyment:** Lessor covenants with Lessee that at all
28 times during the term of this Lease Agreement, Lessee shall peacefully hold and
29 quietly enjoy the demised premises without any disturbance or hindrance from
30 Lessor or from any other person claiming through Lessor, except that the City or
31 others claiming through the Lessor, may enter onto the demised premises to
32 effect necessary repairs to their own facilities as reasonably contemplated by the
33 terms of this Agreement and to assure compliance with the terms of this
34 Agreement. Lessee shall cooperate with the Lessor to effect this access to the
35 demised premises.

36 **Section 9.2. Trash and Public Safety Cooperation:** The parties agree
37 to cooperate with each other and use their best efforts to ensure that there is
38 prompt trash removal, public safety protection and adequate traffic control during
39 the designated period of occupancy by the Lessee of the premises.

1 **Article X**

2 **Section 10.1. Condition of Premises After Show:** Following the
3 occupancy period, the Lessee, at Lessee's sole expense, shall return the
4 premises in the same or superior condition than received, natural wear and tear
5 excepted.

6 **Section 10.2. Lessee's Equipment After Show:** Prior to the expiration
7 of the lease term, Lessee shall immediately remove all of its property, fixtures
8 and chattels from the leased premises. In the event that Lessee, its officers,
9 agents, employees, vendors, subtenants or contractors fail to remove any item of
10 property, Lessor reserves the right to remove and store any such property after
11 the expiration or termination of the lease term at Lessee's expense or as an
12 alternative, to leave the property at the leased premises. In either case, Lessor
13 shall charge Lessee per diem rental for storage of such property. Lessor shall
14 bear no responsibility or liability for damage to or expense incurred as a result of
15 property left, removed or stored under the provisions of this Section. Lessee
16 shall pay to Lessor any expenses or charges under this Section billed to Lessee
17 by Lessor within thirty (30) days after delivery of any such bill by Lessor to
18 Lessee.

19 **Section 10.3. Post-Show Inspection:** Within ten (10) days following the
20 expiration of the occupancy period, the Lessee shall accompany the Lessor
21 during a tour of the premises to determine the condition thereof. Items corrected
22 or repaired by the Lessor, deemed by Lessor to be the responsibility of Lessee,
23 shall be billed by the Lessor and paid by the Lessee within thirty (30) days after
24 receipt of such bill.

1 **Article XI**

2 **Section 11.1. Remedies:** It is understood and agreed that any and all
3 duties, liabilities and/or obligations imposed upon or assumed by the Lessee and
4 Lessor by or under this lease shall be taken or construed as cumulative and that
5 the mention of any specified duty, liability or obligation imposed upon or assumed
6 by Lessee or Lessor under this Lease, shall not be taken or construed as a
7 limitation or restriction upon any or all of the other duties, liabilities, or obligations
8 imposed upon or assumed by the Lessee under this Lease. The remedies
9 provided herein shall be construed to be cumulative and in addition to any other
10 remedies provided herein, or any remedies provided in law or equity which the
11 Lessor or Lessee would have in any case. It is understood and agreed that
12 Lessor shall have the right to seek and obtain in any court of competent
13 jurisdiction an injunction without the necessity of posting a bond to restrain a
14 violation or alleged violation by Lessee of any covenant or covenants contained
15 in this agreement, anything to the contrary notwithstanding. In no case shall a
16 waiver by either party of the right to seek relief under this provision constitute a
17 waiver of any other or further violation. The remedies provided hereunder shall
18 not be deemed exclusive of other remedies not specified.

19 **Article XII**

20 **Section 12.1. Impossibility of Performance:** If, for any reason, an
21 unforeseen event not the act of Lessor occurs, including but not limited to fire,
22 casualty, act of God, labor strike or other unforeseen occurrence which renders
23 impossible the fulfillment of any rental period of this Lease, Lessee shall have no
24 right to nor claim for damages against Lessor; but Lessee shall not be liable for
25 the payment of rent for said rental period, except that if such impossibility relates
26 only to more than five percent (5%) of the rental period, Base Rent, if determined
27 under Section 1.3(A)(ii) hereof, shall be prorated to account for the number of
28 scheduled hours the Show is not open to the public.

29 **Article XIII**

30 **Section 13.1. Payment:** Lessee shall make all payments due under this
31 Agreement by check, made payable to the City of Annapolis. In addition to all
32 other amounts due hereunder, Lessee shall pay Lessor a monthly late fee of
33 1.5% (18% per annum) of any payment more than sixty (60) days past due, until
34 paid.

35 **Article XIV**

36 **Section 14.1. Time is of the Essence:** Time is of the essence in the
37 performance of this Agreement, and the times herein granted shall not be
38 extended for any reason, except as provided herein, for the occupancy or use of
39 the aforementioned premises or for the installation or removal of equipment,
40 materials or displays therefrom without written permission from the Lessor.

41 **Article XV**

1 **Section 15.1. Assignment:** Lessee shall not assign, transfer, or
2 otherwise dispose of this Lease without the prior written consent of Lessor, but
3 such consent shall not be unreasonably or arbitrarily withheld. The foregoing
4 shall not prevent Lessee from subleasing portions of the premises to boat show
5 exhibitors provided the portion of the premises subleased to any exhibitor does
6 not exceed twenty-five percent (25%) of the total area of the Premises.

7 **Article XVI**

8 **Section 16.1. Independent Contractor:** Lessee herein is an
9 independent contractor and not the agent or employee of the Lessor. Under no
10 circumstances shall this Lease be considered a contract of partnership or joint
11 venture.

12 **Article XVII**

13 **Section 17.1. Liens, Etc:** Lessee hereby consents to and Lessor shall
14 have a lien upon all property of Lessee located from time to time upon the
15 premises for any and all unpaid charges which arise under this Lease. Lessee
16 hereby consents to and Lessor shall have the power to impound and retain the
17 possession of such property until all such charges and late fees due under Article
18 XIII have been paid, in full, to the satisfaction of Lessor. In the event such
19 charges remain unpaid ten (10) days after the termination of the rental period,
20 the Lessor shall have the power to sell such property at public auction, and apply
21 the receipts from such auction to all such unpaid charges.

22 **Article XVIII**

23 **Section 18.1. Compliance with all Laws:** Except as otherwise provided
24 herein, Lessee agrees to comply with all laws, ordinances, and statutes
25 applicable to the leased premises, or any part thereof, and the use thereof, and
26 to pay all taxes or charges imposed by law in connection with Lessee's use and
27 occupancy of the said leased premises, provided, however, the Lessee shall
28 have reasonable time to correct any such alleged violation.

29 **Article XIX**

30 **Section 19.1. Other Leases:** This Lease Agreement shall have no effect
31 on the Lease Agreements for the 2005 through 2008 Boat Shows between the
32 parties.

33 **Article XX**

34 **Section 20.1. Immunities:** Nothing herein shall be interpreted or
35 construed to waive, in whole or in part, or to otherwise diminish Lessor's
36 statutory, common law or other immunities in any action in tort, in contract or in
37 any other form. The parties further agree that if any duty assumed by Lessor
38 under the terms of this Agreement or any action taken by Lessor pursuant to any
39 such term is construed to waive, in whole or in part, any such immunity, then the
40 immunity shall nevertheless be fully restored, and shall bind and protect the
41 parties as a contractual undertaking.

Article XXI

Section 21.1. Authority: This Lease is authorized by Ordinance O-X-05 adopted by the Annapolis City Council.

IN WITNESS WHEREOF, the City of Annapolis, by and through its duly authorized agent, has caused this Lease to be executed on its behalf, and the Lessee, United States Yacht Shows, Inc., and Annapolis Boat Shows, Inc., have duly executed this lease this _____ day of _____, 2005, by their respective Presidents.

ATTEST:

CITY OF ANNAPOLIS

Deborah Heinbuch, City Clerk

BY: _____
ELLEN O. MOYER, MAYOR

UNITED STATES YACHT SHOWS, INC.

Witness

BY: _____
KATHRYN M. WOOD, PRESIDENT

ANNAPOLIS BOAT SHOWS, INC.

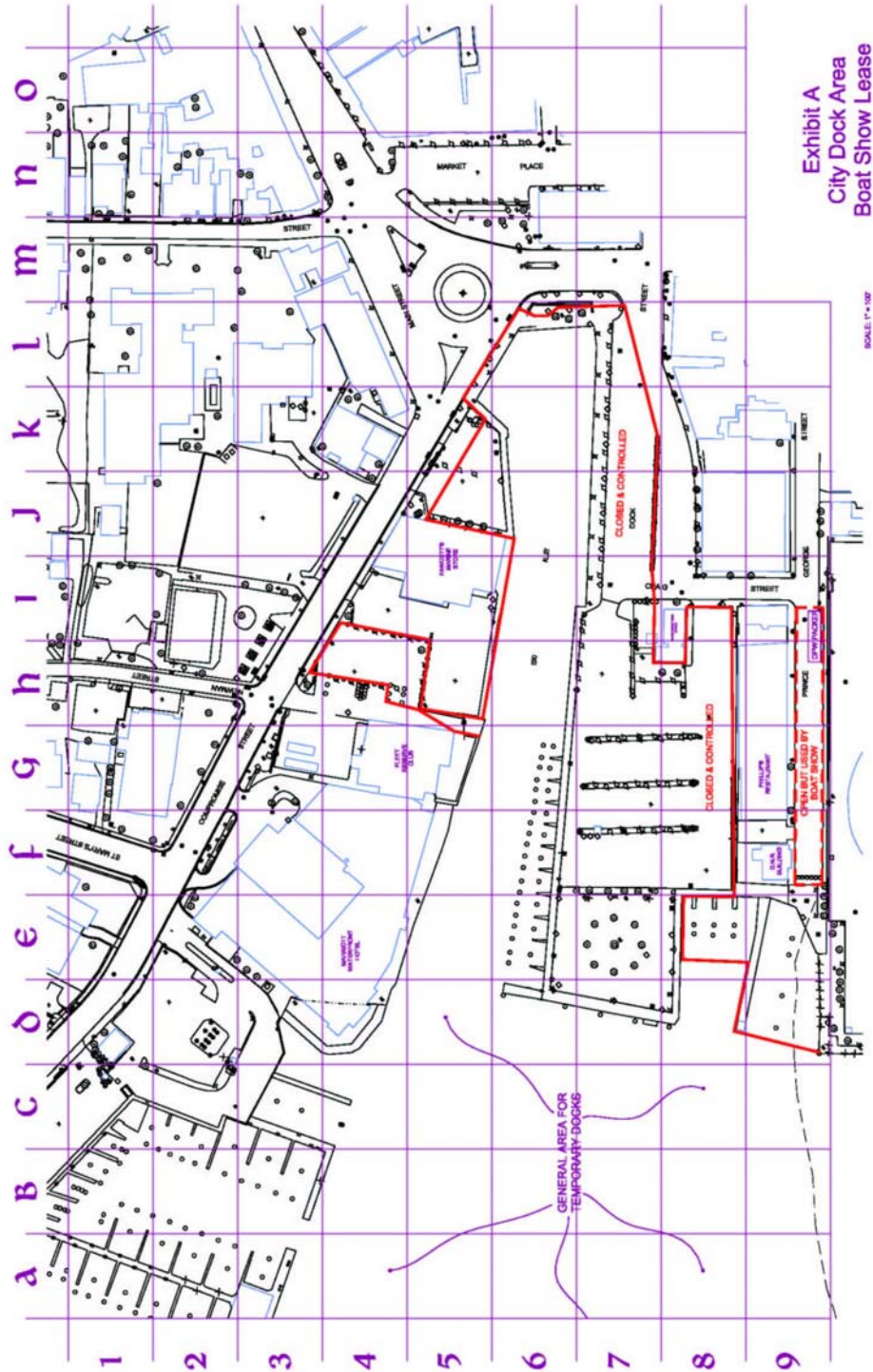
Witness

BY: _____
KATHRYN M. WOOD, PRESIDENT

Approved as to form and legal sufficiency

Shaem C. Spencer
City Attorney

Date



1
2

BoatShowLease

